STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 23 CVS 17361
CHARLES SCHWAB & CO., INC., Plaintiff, v. LAUREN ELIZABETH MARILLEY and PETER JOSEPH MARILLEY, Defendants.	**AMENDED ORDER ON DEFENDANT PETER MARILLEY'S MOTION TO STRIKE AND MOTION TO WITHDRAW OR AMEND ADMISSIONS**

1. **THIS MATTER** is before the Court on Defendant Peter Marilley's Motion to Enforce the Case Management Order and to Strike twenty-one of Defendant Lauren Marilley's requests for admission (the Motion to Strike), (ECF No. 88), as well as his Motion to Withdraw or Amend Admissions (the Motion to Withdraw), (ECF No. 92), (together, the Motions).[1]

2. Mr. Marilley contends that Ms. Marilley improperly served her requests for admission twenty-six through forty-six because the Court's case management order permits only twenty-five such requests. Because (a) the rules governing this case at the time Ms. Marilley served the discovery permitted her to serve forty-six requests, (b) Mr. Marilley waived his right to object to the number of requests by failing timely to do so, and (c) the Court has already entered an order deeming the

[1] Having heard the parties with respect to the requests for admission at a Business Court Rule (BCR) 10.9 conference held on 8 September 2025, and having considered the parties' briefing, the Court opts to rule on the Motions without a hearing as BCR 7.4 permits.

requests admitted and there is no basis to reconsider that order, the Court shall not strike Ms. Marilley's requests.

3. Mr. Marilley also seeks to withdraw or amend all forty-six of his admissions pursuant to Rule 36(b) of the North Carolina Rules of Civil Procedure (the Rule(s)). Arguing excusable neglect, he alternatively moves to permit his late responses pursuant to Rule 6(b). Because (a) withdrawal of Mr. Marilley's admissions at this stage of the litigation would result in prejudice to Ms. Marilley, and (b) Mr. Marilley has failed to show excusable neglect, the Court shall not permit withdrawal or amendment of the deemed admissions.

4. Therefore, as discussed further below and in the exercise of its discretion, the Court **DENIES** the Motions.

I. BACKGROUND

5. Ms. Marilley first served her forty-six requests for admission on 18 October 2023, almost a month before the Chief Justice designated this matter as a mandatory complex business case. (Aff. Serv., ECF No. 5; Designation Order, ECF No. 1.) At Mr. Marilley's request, and with Ms. Marilley's consent, the Court extended the deadline for Mr. Marilley to respond to the requests to 3 January 2024. (12/4/2023 Order, ECF No. 13.) Mr. Marilley did not respond to the requests within this deadline.

6. Thereafter, the Court stayed discovery while the parties litigated arbitration issues before this Court and on appeal to the Supreme Court. (1/9/2024 Order, ECF No. 27; 4/15/2024 Order, ECF No. 44.) After resolution of the appeal, on 14 April 2025, the Court lifted the stay and ordered the parties to confer and file a

joint case management report. (4/14/2025 Order, ECF No. 48.) For unexplained reasons, Mr. Marilley did not participate in preparing the case management report. (Case Mgmt. Report 1, ECF No. 31.)

7. On 1 May 2025, the Court granted a motion to withdraw filed by Mr. Marilley's counsel.[2] (5/1/2025 Order, ECF No. 52.) In the same order, the Court stayed the case for twenty days to afford Mr. Marilley time to retain new counsel. (5/1/2025 Order.)

8. On 2 May 2025, the Court entered a case management order permitting each party to serve up to twenty-five requests for admission and requiring Mr. Marilley to respond to all of Ms. Marilley's outstanding written discovery requests—including the forty-six requests for admission she had served over a year prior—on or before 23 June 2025. (5/2/2025 Case Mgmt. Order, ECF No. 53.)

9. Mr. Marilley again failed to respond to any of Ms. Marilley's written discovery requests, including the requests for admission, by the Court-ordered 23 June 2025 deadline. He did not move for an extension of time to respond to discovery prior to the deadline.

10. Mr. Marilley's failure to respond prompted Ms. Marilley to initiate the BCR 10.9 process on 26 June 2025. The Court conducted a BCR 10.9 conference on 8 July 2025.[3] During the conference, Mr. Marilley offered various excuses for his

---

[2] This was the second time counsel representing Mr. Marilley have moved to withdraw. (*See* 3/13/2024 Mot. Withdraw, ECF No. 32; 3/20/2024 Order, ECF No. 38.)

[3] The Court noticed a BCR 10.9 conference for 7 July 2025. (7/3/2025 Not. BCR 10.9 Conference, ECF No. 59.) The Court conducted the conference with counsel for Ms. Marilley and for Charles Schwab, but Mr. Marilley—still *pro se* at the time—failed to

failure to respond to Ms. Marilley's written discovery by the Court-ordered deadline. He did not, however, object to the number of requests for admission.

11. In its order following the 10.9 conference, the Court specifically found that Ms. Marilley had properly served Mr. Marilley with written discovery, including the requests for admission, on 18 October 2023. (7/10/2025 Order ¶ 5.) In the same order, the Court concluded that Mr. Marilley had failed to show good cause to excuse his failure to respond to the discovery and determined that, in accordance with Rule 36(b), all forty-six requests were deemed admitted. (7/10/2025 Order ¶¶ 13–15.)[4]

II. ANALYSIS

12. A request for admission is deemed judicially admitted if the receiving party fails to serve upon the party requesting the admission a written answer or objection within the appointed time. N.C. R. Civ. P. 36(a) ("The matter *is admitted* unless, within 30 days after service of the request . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter[.]" (emphasis added)). A matter so admitted "is conclusively established unless the court on motion permits withdrawal or amendment of the admission." *Goins v. Puleo*, 350 N.C. 277, 280 (1999) (emphasis omitted) (quoting N.C. R. Civ. P. 36(b)).

---

appear. (7/10/2025 Order, ECF No. 64.) Following the conference, Mr. Marilley notified the Court that he had tried but been unable to join the 7 July conference. To afford him a second opportunity to address the parties' discovery dispute, the Court noticed a second BCR 10.9 conference for the following day at which Mr. Marilley appeared *pro se*. (7/7/2025 Not. BCR 10.9 Conference, ECF No. 61; 7/10/2025 Order.)

[4] The Court also sanctioned Mr. Marilley by requiring him to pay the reasonable fees and expenses resulting from his failure. (7/10/2025 Order ¶ 17.)

13. "North Carolina trial courts are vested with broad authority to manage cases in their dockets, including discovery issues." *Value Health Sols., Inc. v. Pharm. Rsch. Assocs., Inc.*, 385 N.C. 250, 280 (2023) (citing *Beard v. N.C. State Bar*, 320 N.C. 126, 129 (1987)). The Court possesses "inherent authority to do all things that are reasonably necessary for the proper administration of justice." *Id.* (citation modified) (quoting *Beard*, 320 N.C. at 129).

14. At the same time, Rule 36 "means precisely what it says[;] i.e., in order to avoid having requests for admissions deemed admitted, a party must respond within the period of the rule if there is any objection whatsoever to the request." *J.M. Parker & Sons, Inc. v. William Barber, Inc.*, 208 N.C. App. 682, 688 (2010) (citation modified) (quoting *Town of Chapel Hill v. Burchette*, 100 N.C. App. 157, 162 (1990)).

15. Mr. Marilley's two Motions address related but distinct issues arising from his failure to respond to requests for admission by the Court-ordered deadline. The Court addresses each of Mr. Marilley's Motions in turn.

A. The Motion to Strike

16. Rule 36 imposes no limit on the number of requests for admission a party may serve. *See* N.C. R. Civ. P. 36(a); G. Gray Wilson, *North Carolina Civil Procedure*, § 36-1 (4th ed. 2025) ("Requests [for admission] may be served without leave of court, and there is no limit to their number . . . ."). Nor is there a limit in the General Rules of Practice for the Superior and District Courts. *See* N.C. R. Super. & Dist. Cts. Rule 8. BCR 10.4(b)'s "[p]resumptive limit" on the number of requests for

admission a party may serve is twenty-five, though the Court may direct otherwise. BCR 10.4(b).

17. A party may seek a protective order if the number of requests for admission is unduly burdensome. N.C. R. Civ. P. 26(c); Wilson, *Civil Procedure*, § 36-2 ("[A] protective order may be entered if [the requests for admission] are so voluminous as to be unduly burdensome."). A party may also object in writing to the number of requests for admission. N.C. R. Civ. P. 36(a) (requiring service of written "answers or objections" to avoid admission); *In re: Goddard & Peterson, PLLC*, 248 N.C. App. 190, 194 (2016) (quoting *Burchette*, 100 N.C. App. at 162) (recognizing conclusive effect of failure to respond or object to requests for admission). Failure to object to written discovery requests within the time to respond constitutes waiver of the objection. *Cf. Burns v. Kingdom Impact Glob. Ministries, Inc.*, 251 N.C. App. 724, 729–30 (2017) (quoting *Golding v. Taylor*, 19 N.C. App. 245, 248 (1973)) (discussing waiver for failure to answer or object to interrogatories).

18. Here, contrary Mr. Marilley's contention, Ms. Marilley's service of the requests for admission at issue did not violate either the BCRs or this Court's case management order because, at the time, neither applied. The Chief Justice had yet to designate this matter as a mandatory complex business case.[5]

[5] Ms. Marilley's service of the requests for admission with her cross-claim was consistent with policy favoring early discovery. N.C. R. Super. & Dist. Cts. Rule 8 ("Counsel are required to begin promptly such discovery proceedings as should be utilized in each case[] and are authorized to begin even before the pleadings are completed.").

19. Mr. Marilley's claim that the Court's 2 May 2025 case management order limited the parties to only twenty-five requests for admission also fails under examination. Regardless of the number of requests for admission the parties could have served going forward, as the case management order made clear, Mr. Marilley was obligated to respond to all outstanding written discovery requests previously served.

20. Further, Mr. Marilley cannot avoid the fact that he failed to take prompt action to avoid the consequences that followed from his failure to respond to requests for admission in accordance with Rule 36. Whether by motion for protective order or service of written objections, the onus for avoiding those consequences was on Mr. Marilley, not on the Court or Ms. Marilley. Even when Mr. Marilley finally—and belatedly—responded to the requests for admission in writing, he responded to all forty-six of them without objecting based on numerosity. Thus, through his own conduct, Mr. Marilley waived the objection he now seeks to raise.

21. Finally, the fact that Mr. Marilley remained *pro se* despite having had weeks to retain counsel before the Court-ordered deadline to respond to the requests for admission is not a basis to favor his position over Ms. Marilley's position and ignore the language of Rule 36. Mr. Marilley is subject to the same rules that apply to any other litigant, and the Court rejects his attempt to avoid the consequences of his actions on this basis. *See Goins*, 250 N.C. at 281–82 ("[T]he Rules of Civil Procedure promote the orderly and uniform administration of justice, and all litigants

are entitled to rely on them. Therefore, the rules must be applied equally to all parties to a lawsuit, without regard to whether they are represented by counsel.").

22. Accordingly, the Court, in its discretion, **DENIES** the Motion to Strike.

B. The Motion to Withdraw

23. Rule 36(b) provides that the Court may permit withdrawal or amendment of an admission "when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits." N.C. R. Civ. P. 36(b).

24. The Rule gives the trial court discretion to allow withdrawal of an admission upon a party's motion. *Shwe v. Jaber*, 147 N.C. App. 148, 151 (2001); *Excel Staffing Serv., Inc. v. HP Reidsville, Inc.*, 172 N.C. App. 281, 285 (2005) (holding decision on withdrawal is discretionary and "will not be overturned absent a showing that the decision was so arbitrary that it could not have been the result of a reasoned decision").

25. When exercising that discretion, our Court of Appeals has held that "the trial court is not required to consider whether the withdrawal of the admissions would prejudice a party in maintaining its action." *J.M. Parker*, 208 N.C. App. at 688 (citation modified) (quoting *Interstate Highway Express, Inc. v. S & S Enters.*, 93 N.C. App. 765, 769 (1989) (declining to require consideration of prejudice when

denying withdrawal)).[6] Nonetheless, the Court considers both factors when reaching its decision here.

a. Presentation of the Merits

26. Ms. Marilley has narrowed her claims against Mr. Marilley to one: declaratory judgment with respect to ownership of the Restrained Assets. (Def.'s 9/9/2025 Notice Voluntary Dismissal, ECF No. 87; Def.'s 9/16/2025 Notice Voluntary Dismissal, ECF No. 91.) The judicially admitted facts pertain to this claim. Although any admission-by-default eliminates the need for presentation on the merits to some degree, that fact alone cannot be dispositive when deciding whether to permit withdrawal of judicial admissions. If it were, the relevant language of Rule 36(a) would be meaningless. *See Excel Staffing*, 172 N.C. App. at 285 ("Rule 36 means exactly what it says. In order to avoid having the requests deemed admitted, a party must respond within the specified time period. Litigants in this state are *required* to respond to requests for admission with *timely*, good faith answers. . . . To read Rule 36 as liberally as defendants ask us to do would effectively eviscerate the rule, a result

[6] Mr. Marilley argues for application of the federal standard. (Def.'s Br. Supp. Mot. Withdraw 6–7, ECF No. 93). North Carolina law, like federal law, authorizes courts to permit withdrawal of admissions if "upholding the admissions would practically eliminate any presentation of the merits of the case," and if denying the withdrawal would "prejudice the requesting party in maintaining or defending the action on the merits." *United States ex rel. Graybar Elec. Co., Inc. v. TEAM Constr. LLC*, 275 F. Supp. 3d 737, 742–43 (E.D.N.C. 2017) (quoting Fed. R. Civ. P. 36 (b)). However, even under federal law "Rule 36(b) does not *require* a district court to grant relief when the two-part test is satisfied." *Id.* at 743 (emphasis added). Rather, satisfaction of the two-part test merely opens the door for the court to permit or not permit, in its discretion, the requested withdrawal. *Conlon v. United States*, 474 F. 3d 616, 624–25 (9th Cir. 2007).

we refuse to endorse." (citation modified)). Accordingly, the Court concludes that the first factor does not support withdrawal of the admissions.

b. Prejudice to Ms. Marilley

27. The burden of proving prejudice is on the party who obtained the admission, Ms. Marilley. *See* N.C. R. Civ. P. 36(b). Ms. Marilley has met her burden. To permit Mr. Marilley to withdraw his admissions would improperly and negatively affect Ms. Marilley's ability to litigate this case for several reasons.

28. First, Ms. Marilley relied on the admissions on 5 August 2025 when moving for summary judgment and briefing that motion. Her reliance was reasonable. Mr. Marilley did not move for withdrawal of the admissions until 17 September 2025, some nine weeks after the Court's 10 July 2025 order deeming them admitted and five weeks after Ms. Marilley's motion for summary judgment.

29. Second, although the discovery deadline has not passed, Ms. Marilley's access to key information through discovery apparently has. Mr. Marilley represents that he is no longer in control of Dr. Marilley's finances and, therefore, he no longer has access to some of the information Ms. Marilley seeks. (*See* 7/10/2025 Order ¶ 10 ("During the 8 July 2025 conference, Mr. Marilley argued that he is unable to respond to the Discovery Requests because he no longer is his father's guardian and does not have access to certain documents. This excuse may explain why he is unable to respond substantively to some of the Discovery Requests, but it does not justify his wholesale failure to respond."); Def.'s Br. Supp. Mot. Withdraw 2 (citing "practical difficulties in obtaining requested information"); Tr. 8/6/2024 Hr'g 50:16–55:10, Def.'s Mot. Supp. Mot. Summ. J., Ex. N, ECF No. 74.3 (discussing Mr. Marilley's June 2024

removal as parents' agent)). Given Mr. Marilley's professed recent inability to respond to Ms. Marilley's discovery requests because of events that have occurred in the Marilley family, the Court concludes that Ms. Marilley would be prejudiced by withdrawal of the admissions.

30. Finally, Mr. Marilley failed to obtain counsel even after the Court stayed the case for twenty days to permit him to do so. (5/1/2025 Order 3, ECF No. 52.) To the extent that failure led to his delay in seeking to withdraw his admissions, it prejudices Ms. Marilley. *See Islet Scis., Inc. v. Brighthaven Ventures, LLC*, 2018 NCBC LEXIS 85, at*9–11 (N.C. Super. Ct. Aug. 16, 2018) (holding combination of delay between admission and motion to withdraw, together with failure to obtain counsel despite court's indulgence and encouragement, constituted prejudice to party opposing withdrawal).

31. Mr. Marilley has admitted that he was served with, and has been aware of, the requests for admission since October 2023. His repeated failure to comply with the rules and orders of this Court does not warrant leniency. Mr. Marilley's request that the Court use its discretion to undo the consequences of his failure to comply with Rule 36 is unpersuasive. The Rules of Civil Procedure are rules after all—not suggestions.

32. Therefore, the Court, in the exercise of its discretion, **DENIES** Mr. Marilley's Motion to Withdraw.[7]

[7] Mr. Marilley's reliance on Rule 6(b) of the North Carolina Rules of Civil Procedure is unavailing. Rule 6(b) authorizes, but does not require, the Court to permit a party to do an act even though the deadline to do so has passed when the Court finds that "the failure to act

III. CONCLUSION

33. **WHEREFORE**, the Court, exercising its discretion, **DENIES** the Motion to Strike and the Motion to Withdraw.

IT IS SO ORDERED, this the 8th day of October, 2025.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases

was the result of excusable neglect." N.C. R. Civ. P. 6(b). For the reasons stated above, the Court does not find excusable neglect.